

AGENDA

SPECIAL MEETING BOARD OF MAYOR AND ALDERMEN (Called by the Mayor)

August 25, 2004

**7:30 PM
Aldermanic Chambers
City Hall (3rd Floor)**

1. Mayor Baines calls the meeting to order.
2. Mayor Baines calls for the Pledge of Allegiance.

A moment of silent prayer is observed.
3. The Clerk calls the roll.
4. Purchase of Jac-Pac property.
Ladies and Gentlemen, what is your pleasure?

5. **REFERRAL TO COMMITTEE**

Committee on Finance

5(a) Resolutions:

“A Resolution authorizing up to Three Million Four Hundred Thousand Dollars (\$3,400,000.) in expenditures from the Special Revenue Reserve Account for costs relating to the acquisition of the so-called JacPac property and further authorizing the mayor to execute related documents to consummate such transaction.”

“Amending the FY2005 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Three Million Four Hundred Thousand Dollars (\$3,400,000) for CIP 613105 “Jac Pac” Acquisition Project.”

“Amending the FY2003 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000) for CIP 511803 Stadium Construction & Gill Stadium Reconstruction Project.”

6. Mayor Baines advises that a motion is in order to recess the special meeting to allow the Committee on Finance to meet.
7. Mayor Baines calls the meeting back to order.
8. Report(s) of the Committee on Finance, if available.
Ladies and Gentlemen, what is your pleasure?
9. Report of the Special Committee on Riverfront Activities and Baseball, if available.
Ladies and Gentlemen, what is your pleasure?
10. Resolutions: **(A motion is in order to read by titles only.)**

“A Resolution authorizing up to Three Million Four Hundred Thousand Dollars (\$3,400,000.) in expenditures from the Special Revenue Reserve Account for costs relating to the acquisition of the so-called JacPac property and further authorizing the mayor to execute related documents to consummate such transaction.”

“Amending the FY2005 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Three Million Four Hundred Thousand Dollars (\$3,400,000) for CIP 613105 “Jac Pac” Acquisition Project.”

“Amending the FY2003 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000) for CIP 511803 Stadium Construction & Gill Stadium Reconstruction Project.”

A motion is in order that the Resolutions pass and be enrolled.

- 11.** Mayor Baines advises that this being a special meeting of the Board, no further business can be presented, and that a motion to adjourn would be in order.

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement"), made and entered into this _____ day of August, 2004 by and between Tyson Prepared Foods, Inc., a Delaware corporation (hereinafter called "Seller"), and The City of Manchester, a New Hampshire municipal corporation (hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, Seller is the owner of certain real property located in Hillsborough County, New Hampshire; and

WHEREAS, subject to the terms and conditions set forth herein, Buyer desires to purchase said property from Seller and Seller desires to sell said property to Buyer;

NOW, THEREFORE, in consideration of the premises recited, of the covenants, agreements and provisions of this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereby agree as follows:

1. Agreement to Sell and Buy. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, for the consideration and upon the terms and conditions hereinafter set forth, the lands situated in Hillsborough County, New Hampshire, more particularly described on Exhibit "A" attached hereto, together with all improvements thereon (hereinafter the "Property"), and all rights, privileges and appurtenances pertaining thereto, but subject to any matter disclosed herein, all recorded or restrictions, easements, and other matters of record.

2. Price and Terms of Payment. As the purchase price for the Property, Buyer agrees to pay and Seller agrees to accept, a total purchase price of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00) (the "Purchase Price") as adjusted pursuant to the terms of this Agreement. Within five (5) days after Buyer's receipt of a fully-executed copy of this Agreement, Buyer shall tender to Seller (or Seller's representative), the sum of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) (the "Earnest Money" or "Deposit") as

earnest money in connection with the above-described transaction, to be held in an interest-bearing escrow account by Vincent A. Wenners, Jr., Esq., and applied to the purchase price at Closing. In the event the Deposit is returned to the Buyer pursuant to the terms of this Agreement, the interest shall also be paid over to the Buyer.

3. Closing.

(a) Time and Place. Subject to the terms and conditions set forth in this Agreement, closing and settlement for the sale and purchase of the Property shall take place at a time and place as is mutually agreed to by Seller and Buyer in Manchester, New Hampshire or, if the parties mutually agree, by mail, or fax; provided, however that if any of the Conditions Precedent to Closing set forth in this Agreement have not been satisfied or waived by the party entitled to the benefit of such condition, the Closing will take place on the third business day after such condition has been satisfied or waived, **but in no event shall the closing occur later than December 15, 2004.** The time at which such closing and settlement occurs shall hereinafter be referred to as the "Closing" and the date on which the Closing occurs shall hereinafter be referred to as the "Closing Date."

(b) Payment of the Purchase Price. The balance of the purchase price after deduction of the deposit shall be paid at Closing by the Buyer to the Seller as follows: Two Million Four Hundred Fifty Thousand and No/100 Dollars (\$2,450,000.00) cash in the form of a cashier's check or wire transfer in such amount, and adjusted by any prorations or other amounts described herein; the remaining Five Hundred Thousand and No/100 Dollars (\$500,000.00) shall be paid by the Buyer to the Seller in the form of a promissory note in such amount, payable six (6) months from the date of Closing, with no interest, the note to be secured by a purchase money mortgage.. This language shall survive the closing.

4. CONDITIONS PRECEDENT TO CLOSING. Buyer represents and Seller hereby acknowledges that Buyer intends to use the Property for future Development Purposes ("Intended Use"). Therefore, the purchase contemplated by this Agreement is subject to the following conditions precedent:

(a) If the Survey provided for in Section 10 discloses any condition which renders the Property unusable for the Intended Use (as determined in Buyer's reasonable discretion), then Buyer may rescind this Agreement and the Deposit will be refunded to Buyer, provided, however,

that Buyer has exercised such rescission right by giving Seller written notice with evidence of such condition no later than November 30, 2004.

(b) If the results of the analyses, test borings, or studies pursuant to this Agreement, disclose that the physical condition of the Property, including the existence of hazardous wastes and toxic substances, will prevent Buyer from reasonably developing the Property for the Buyer's intended use, then Buyer may rescind this Agreement, whereupon the Deposit will be refunded to Buyer; provided however, that Buyer has notified Seller in writing with evidence of such unacceptable condition within fifteen (15) days after Buyer receives the results of such analyses, borings, or engineering studies, but not later than November 30, 2004.

(c) Buyer, being able to obtain the approval of all public and governmental authorities to all matters relating to zoning, subdivision replatting, special or conditional use permits, building, environmental permits or similar requirements for the intended use. Buyer covenants to try to obtain such approvals and permits in a diligent and expeditious manner. If Buyer is unable to obtain such approvals and permits, either Seller or Buyer may rescind this Agreement, whereupon the Deposit will be refunded to the Buyer, provided the rescinding party has given the other party written notice no later than November 30, 2004.

5. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer, now and at Closing, as follows:

(a) **Authority; Enforceability.** No authorizations or approvals, whether of governmental bodies, creditors, or otherwise, are necessary to enable Seller to enter into and perform the transactions contemplated herein with respect to the purchase of the Property. This Agreement has been duly and validly executed and delivered by Seller, is a valid and legally-binding agreement of Seller, and, assuming due acceptance and execution thereof by Buyer, is enforceable against Seller in accordance with its terms, except as limited by bankruptcy and insolvency laws and by other laws affecting the rights of creditors generally; and

(b) **Title to Property.** Seller has good and marketable title to, and is in possession of, the Property free and clear of all security interests, including any conditional sale or other title retention agreements, mortgages, pledges, assessments, or defects in title that would render the title to the Property uninsurable or unmarketable, except for current ad valorem taxes, matters of public record and minor encroachments or matters not material to the use or occupation thereof. Seller has not granted any options to purchase or otherwise acquire all or any part of the

Property. Neither the whole nor any portion of the Property has been condemned, requisitioned or otherwise taken by any public authority, and no notice of any such condemnation, requisition or taking has been received by Seller. To the knowledge of Seller, no such condemnation, requisition or taking is threatened or contemplated.

(c) Disclaimer. **SELLER MAKES NO REPRESENTATION OR WARRANTY (EXCEPT AS TO THE WARRANTY OF TITLE CONTAINED IN THE DEED) CONCERNING THE VALUE OF THE PROPERTY, THE CONDITION OF ANY IMPROVEMENTS LOCATED UPON THE PROPERTY, THE ENVIRONMENTAL CONDITION OF THE PROPERTY, THE PRESENCE OR ABSENCE OF ANY HYDROCARBONS, ASBESTOS, ENVIRONMENTAL, HAZARDOUS MATERIAL OR TOXIC CONTAMINATION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR A PARTICULAR PURPOSE, THE GEOLOGICAL CONDITION OF THE PROPERTY, THE MERCHANTABILITY OF THE PROPERTY, OR ITS FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THE AGREEMENT.** The term "Hazardous Materials" means any substance (a) the presence of which requires reporting, investigations, or remediation under any current federal, state, or local statute, regulation or ordinance or (b) which are currently defined as hazardous substances, toxic substances, regulated substances, pollutants, or contaminants under any current federal, state, or local statute, regulation, or ordinance, including hydrocarbons and asbestos.

(d) The Seller without representation or warranty as to accuracy or completeness will deliver or make available to the Buyer within 20 days of the full execution of this Agreement copies of land surveys, soil, geological or environmental reports which were prepared by 3rd parties, if any, and which may be in the Seller's possession. Seller is not obligated to deliver any internally prepared documentation.

(e) Buyer acknowledges that a former owner of the Property, JPF Corp. ("JPF"), formally known as Jac Pac Foods, Ltd. ("Jac Pac"), is conducting remediation and monitoring in two areas of the Property known as the Jac Pac Yards Site and Former Agway Gas Station Site where there is soil and groundwater contamination from former underground storage tanks (collectively, the "Jac Pac Remediation").

6. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller, now and at Closing, as follows:

(a) **Authority; Enforceability.** This Agreement is expressly made subject to the approval of the Board of Mayor and Alderman of the City of Manchester and is not valid or binding until the Board has voted to approve the same. No other authorizations or approvals, creditors, or otherwise, are necessary to enable Buyer to enter into and perform the transactions contemplated herein with respect to the purchase of the Property. This Agreement has been duly and validly executed and delivered by Buyer, is a valid and legally-binding agreement of Buyer, and, assuming a vote approving the same by the Board of Mayor and Aldermen and assuming due acceptance and execution thereof by Seller, is enforceable against Buyer in accordance with its terms, except as limited by bankruptcy and insolvency laws and by other laws affecting the rights of creditors generally; and

(b) **Advice of Attorney.** Buyer understands and acknowledges that the purchase of the Property and the other transactions contemplated hereby are typical of transactions in which the advice of an attorney is typically sought. Buyer has either sought and obtained the advice of an attorney in this regard or waived the right to seek such advice.

(c) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO SECTION 4 OF THIS AGREEMENT, BUYER ACKNOWLEDGES THAT IT HAS INSPECTED THE PROPERTY AND WILL TAKE THE SAME AT CLOSING IN AN "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION. BUYER HEREBY WAIVES AND RELEASES ANY CAUSES OF ACTION OR CLAIMS THAT IT MIGHT HAVE AGAINST SELLER RELATED TO THE CONDITION OF THE PROPERTY OTHER THAN FOR BREACHES OF THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE CLOSING.**

7. **Covenants of The Parties.** Each party to this Agreement shall use its reasonable efforts to cause conditions to their obligations herein set forth to be satisfied prior to the date of Closing. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments reasonably necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder. Assuming the timely satisfaction, or the waiver, of the conditions precedent to Closing set forth herein, all parties shall use their reasonable efforts to

effect and complete the transactions contemplated by this Agreement as promptly as practicable. Each party shall promptly notify the other party of any information delivered to or obtained by such party which would prevent the consummation of the transactions contemplated by this Agreement, or would indicate a breach by the other party (or parties) of the representations, warranties and covenants of either party to this Agreement.

8. **Title Insurance and other Closing Costs.** Seller shall obtain at the Seller's expense either a certificate of title to, or a policy insuring fee simple title to the Real Property in favor of Buyer (including an ALTA Survey Endorsement, provided that Buyer obtains a current ALTA survey of the Property as contemplated in section 10 of this Agreement), from a Title Company/Escrow Agent of Seller's choice. Buyer shall have five (5) days following receipt of said title insurance commitment in which to notify Seller in writing of any exceptions to which Buyer objects, other than those set forth in Section 4(b) of this Agreement. Seller may elect, in Seller's sole discretion, to cure those exceptions which can be cured by the payment of money, and Seller shall have fifteen (15) days in which to cure any remaining exceptions. In the event Seller elects not to cure all such exceptions within such fifteen (15) day period, Buyer may by notice in writing given to Seller within ten (10) days after such election not to cure, either waive its objections to the exceptions which Seller has elected not to cure, whereupon the parties shall proceed with the Closing in accordance herewith, or terminate this Agreement, and Seller will refund Buyer the Earnest Money. Buyer and Seller hereby agree that all closing costs not expressly addressed herein shall be paid by the party typically responsible for such costs pursuant to local custom of the county where the Property is situated.

9. **Deed.** Prior to Closing, Seller shall deliver to Escrow Agent a special warranty deed ("Deed") conveying insurable title to the Property, subject to permitted exceptions and incorporating the covenants, conditions, and restrictions set forth in Section 15 of this Agreement ("Deed Restrictions"). Upon receipt of the Purchase Price (by cash and promissory note as provided in Section 3 (b) of this Agreement) at Closing, Escrow Agent shall record the Deed and other recordable documents as may be delivered in connection with the Closing. It is further understood and agreed that the Deed Restrictions shall be inserted by the Buyer under this Agreement in every deed or ground lease to be delivered by it conveying lots, plots, or other portions of the Property or any interest therein and that such insertions of such Deed Restrictions

in such deed or ground lease shall be deemed a part of the consideration of this Agreement. This section shall survive closing.

10. **Survey.** Buyer, at Buyer's sole responsibility and expense, may obtain a current survey of the Property made in accordance with the "Minimum Standard Detail Requirements for ALTA Land Title Surveys, Urban Classification" prepared by a registered/licensed surveyor ("Survey") no later than November 30, 2004. Within five (5) days upon receipt Buyer shall furnish a copy of the Survey to both Seller and the Title Company. The legal descriptions provided by the Survey shall be the descriptions used in the deed conveying the Property to and in the title insurance policy.

11. **Right of Entry.**

(a) At any reasonable time prior to the closing, and at Buyer's sole cost and responsibility, Buyer or its authorized agents shall have the right to enter upon the Property for any lawful purpose, including, without limitation, conducting the Survey as contemplated by this Agreement and any site analyses, test borings, environmental, engineering or other studies provided for herein following advance notice to Seller of Buyer's need for access, including the scope and location of any invasive testing. If requested by Seller, the Buyer will reasonably cooperate with Seller's environmental group in conducting its environmental studies on the Property. Buyer agrees to defend, indemnify and hold harmless Seller from any damages or liability to persons or property that might arise therefrom, and Buyer agrees to repair at its sole cost and responsibility, or pay Seller the cost of, any damages caused to the Property by such entry. This section shall survive the Closing or earlier termination of this Agreement.

(b) After closing, Buyer grants access to the Property to JPF (or its authorized agents) and Seller without charge as necessary for JPF (or its authorized agents) to complete (and for Seller to observe) the Jac Pac Remediation to the satisfaction of the New Hampshire Department of Environmental Services ("NHDES") using the Method 1 S-3 standards in current NHDES policy or any other comparable future standard approved by the NHDES for use at the Property.

12. **Indemnity.** Upon completion by JPF of the Jac Pac Remediation as specified in Section 11(b), Buyer indemnifies and holds harmless Seller for any claims, damages, liabilities, losses, costs and expenses (including reasonable attorney's fees and expenses) incurred or paid in settlement as a result of or relating to any remaining environmental soil or groundwater

contamination or Hazardous Materials on or below the Property. This section shall survive the Closing or earlier termination of this Agreement.

13. **Taxes and Assessments.**

(a) Seller shall, prior to Closing, have paid all property taxes and assessments levied or extended in the future on the Property for 2003 and prior years and through April 1, 2004; such taxes and assessments after April 1, 2004 and any year thereafter, shall be prorated between the parties as of the Closing Date.

(b) Real Property Transfer Tax. Any real property or other transfer tax imposed by the State of New Hampshire in connection with the transactions contemplated hereby shall be paid by the party required to pay such tax or taxes by the laws of the State of New Hampshire, or otherwise pursuant to local custom.

14. **Broker's Commission.** Each of the parties hereto represents and warrants to the other that there are no real estate broker's commissions due or payable on account of this Agreement or as a result of the sale of the Property to Buyer pursuant hereto. Each party agrees to defend, indemnify and hold the other hereunder harmless from and against any claim for any such commissions, fees or other form of compensation by any such third party claiming through the indemnifying party, including, without limitation, any and all claims, causes of action, damages, cost and expenses (including reasonable attorney's fees and court costs), associated therewith.

15. **Termination.**

(a) This Agreement may be terminated at any time prior to the Closing:

- (i) by mutual consent of Seller and Buyer; or
- (ii) by Buyer pursuant to Section 8 hereof; or
- (iii) due to a material default by either party of the Agreement which goes uncured for ten (10) days after notice.

In the event of termination of this Agreement by Seller or Buyer as provided above, this Agreement will forthwith become void, provided, however, if terminated pursuant to a Buyer default under 15(a)(iii), Buyer shall reimburse Seller for all costs, including but not limited too, title fees, survey costs and legal fees, incurred in connection with this Agreement. If terminated pursuant to 15(a)(i) or (ii) or a Seller default under 15(a)(iii), the Earnest money (if any) will be refunded to Buyer.

16. **Deed Restrictions.** With respect to Deed Restrictions to be placed on the Property, Seller and Buyer hereby agree to the following:

(a) Buyer covenants that the Property shall not be used for or in support of the following: (i) the manufacturing or storage of processed meats.

(b) All such covenants, conditions, and restrictions shall remain in effect for a period of Twenty (20) years. The aforesaid covenants, conditions, and restrictions shall run with and bind the Property, and shall bind Buyer, or its successors or assigns, and shall inure to the benefit of and be enforceable by Seller, or an affiliated company, or its successors and assigns, by any appropriate proceedings at law or in equity to prevent such violations of such covenants, conditions, and restrictions and/or to recover damages for such violations.

(c). Buyer agrees to cooperate with JPF to allow JPF to impose any additional deed restrictions necessary to complete the Jac Pac Remediation to the standards set forth in Section 11(b) to the satisfaction of the NHDES.

17. **Assignment.** Buyer shall not assign this Agreement or any right granted herein without the written consent of Seller, however Buyer shall be expressly permitted to assign to an entity of which Buyer holds a majority or controlling interest, or to any entity of which the Manchester Housing and Redevelopment Authority holds a majority or controlling interest and promptly with such assignment provide Seller with an exact copy of the document(s) concerning such assignment. Moreover, Seller shall have the express right to assign or transfer its interest to a parent company, affiliate, subsidiary, or related company. No assignment shall relieve or release either party of any obligation under this Agreement. This Agreement shall apply to, and shall be binding in all respects upon, and shall inure to the benefit of, the respective successors, assigns and legal representatives of the parties hereto.

18. **Equipment removal.** Notwithstanding anything to the contrary that may be contained herein this Agreement, Seller shall be expressly permitted to remove from the Property prior to the Closing, the following described equipment:

- (a) One (1) Firgoscandia Model FPF-M5/t Freezing System S/N 0-10643; and
- (b) One (1) Firgoscandia Model FP 146 ACPT Refrigeration System S/N 0-10646.

Provided, however, that the Seller shall repair any damage to the land or buildings thereon caused by such removal within thirty (30) days of removal, restoring the premises to the same condition in which they were as of the date of full execution of this Agreement.

19. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of New Hampshire, all rights and remedies being governed by said laws.

(b) Waiver. No waiver of any term, provision or condition of this Agreement in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. The rights or remedies set forth herein are in addition to any rights or remedies which may be granted by law or equity.

(c) Entire Agreement and Modification. This Agreement is intended by the parties hereto as a final expression of their agreement with respect to the subject matter hereof and is intended as a complete and exclusive statement of the terms and conditions of this Agreement. This Agreement may not be modified, rescinded or terminated orally, and no modification, rescission, termination or attempted waiver of any of the terms, provisions or conditions hereof (including this subsection) shall be valid unless in writing and signed by the party against whom the same is sought to be enforced.

(d) Section Headings. The headings of sections contained in this Agreement are provided for convenience only. They form no part of this Agreement and shall not affect its construction or interpretation. All references to sections or subsections refer to the corresponding sections and subsections of this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require. This "Agreement" shall mean this Agreement as a whole and as the same may, from time to time hereafter, be amended, supplemented or modified. The words "herein," "hereby," "hereof," "hereinabove" and "hereinbelow," and words of similar import, refer to this Agreement as a whole and not to any particular section, subsection, paragraph, clause or other subdivision hereof, unless otherwise specifically noted.

(e) Time of Essence. With respect to all time periods and duties set forth in this Agreement, time is of the essence.

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to be but one and the same Agreement.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

BUYER:

THE CITY OF MANCHESTER, a New
Hampshire Municipal Corporation

By: _____

Title: _____

SELLER:

TYSON PREPARED FOODS, INC.,
a Delaware corporation

By: _____

Title: _____

ATTEST:

Title: _____

4

EXHIBIT "A"

PROPERTY DESCRIPTIONS

Tract 1

A certain tract of land with the buildings thereon situated in said Manchester, bounded and described as follows:

Beginning at a point on the northerly line of Hancock Street which is 180 feet westerly from the southwesterly corner of lot No. 1 as shown on a plan of land of Hill and Currier, made by Frank A. Gay, C.E., and dated September 12, 1913; thence northerly, making an angle from the west with the northerly line of Hancock Street of $90^{\circ} 52'$, and by other land of Rudolf Leibrock, Agent of the True W. Jones Brewing Company, two hundred seventy and nine hundredths (270.09) feet to a point at land of the Amoskeag Mfg. Co., thence westerly, making an inside angle with the last described line of $83^{\circ} 26'$, by land of said Amoskeag Mfg. Co., and by land of the Boston and Maine Railroad, one hundred sixty-eight and thirty-six hundredths (168.36) feet to a hub which is thirty-seven and twelve hundredths (37.12) feet easterly from the center line of the south bound main line track of said railroad; thence southerly by land of said railroad, and on a curve which is parallel to, and thirty-seven and twelve-hundredths (37.12) feet easterly from, the center line of the above mentioned south bound track, a distance of one hundred ninety-two and eighty-five hundredths (192.85) feet to a stake at the beginning of the curve; thence southerly by a tangent, which is parallel to and thirty-seven and twelve-hundredths (37.12) feet easterly from the center line of the above mentioned south bound track, a distance of sixty-nine and fifty-eight hundredths (69.58) feet to a hub on the northerly line of Hancock Street; thence easterly, by the northerly line of Hancock Street, making an inside angle with the last described line of $75^{\circ} 49'$, a distance of two hundred thirty-three and ninety-nine hundredths (233.99) feet to the place of beginning, containing 52,373 square feet, more or less. Meaning and intending herein to describe and convey Parcel No. 1 as shown on a plan of land of True W. Jones Brewing Company drawn by Gay and Dowst C.E., and dated February 1928.

Meaning and intending to describe and to convey as Tract 1 the same premises that were conveyed to Granite State Abattoir, Inc. by deed of New Hampshire Fruit Exchange, Inc. dated January 3, 1935 and recorded in the Hillsborough County Registry of Deeds at Book 936, Page 309.

Tract 2

Beginning at a stone bound on the northerly side of Hancock Street at the southwesterly corner of Lot No. 1 as shown on a plan of land of Hill and Currier, made by Frank E. Gay, C.E., and dated September 12, 1913, it being the southeasterly corner of land herein described; thence northerly by lots Nos. 1, 3 and 7 as shown on the above mentioned plan, two hundred eighty-eight and 9/100 (288.09) feet to a stone bound at land now or formerly of the Amoskeag Mfg. Co.; thence westerly by said land now or formerly of said Amoskeag Mfg. Co., making an inside angle of $83^{\circ} 26'$ with the last described line, eighty and 52/100 (80.52) feet to land formerly of the True W. Jones Brewing Company; thence southerly by Parcel 2 hereinafter described and parallel to the first described line, two hundred eighty and 9/100 (280.09) feet to a point on the northerly line of Hancock Street; thence easterly, making an inside angle with the last described line of $89^{\circ} 08'$, and by the northerly line of Hancock Street, eighty (80) feet to the place of beginning.

Tract 3

Beginning at a point on the northerly line of Hancock Street which is eighty (80) feet westerly from the southwesterly corner of Lot No. 1 as shown on a plan of land of Hill and Currier, made by Frank E. Gay, C.E., and dated September 12, 1913; thence northerly, making an angle from the west with the northerly line of Hancock Street of $90^{\circ} 52'$ and by land hereinbefore described two hundred eighty and 9/100 (280.09) feet to a point at land now or formerly of the Amoskeag Mfg. Co.; thence westerly, making an inside angle with the last described line of $83^{\circ} 26'$, by land of said Amoskeag Mfg. Co., one hundred and 65/100 (100.65) feet to a point at land formerly of the True W. Jones Brewing Company; thence southerly by land formerly of the True W. Jones Brewing Company, and parallel to the first described line, two hundred seventy and 9/100 (270.09) feet to a point on the northerly line of Hancock Street; thence easterly, making an inside angle with the last described line of $89^{\circ} 08'$, by the northerly line of Hancock Street one hundred (100) feet to the point of beginning.

Meaning and intending to describe and to convey as Tracts 2 and 3 the same premises that were conveyed to Granite State Packing Company by deed of Saul Waisman and Samuel Waisman dated September 24, 1942 and recorded in said Registry at Book 1038, Page 395.

Tract 4

A certain tract of land located in said Manchester bounded and described as follows, to wit:

Beginning at a hub on the northerly line of Hancock Street four hundred sixteen and 67/100ths (416.67) feet westerly from the intersection of said northerly line of Hancock Street with the westerly line of Hamilton Street as shown on a certain plan of land recorded in the Hillsborough County Registry of Deeds, entitled "Properties of Raco Theodore of Manchester, N.H., H.T. Dickson, Surveyor, September 9, 1939"; thence

(1) Easterly along said northerly line of Hancock Street one hundred sixteen and 67/100ths (116.67) feet to a point; thence

(2) At an angle of ninety degrees (90°) with the last named course one hundred (100) feet to the southerly line of Lot 5 as shown on said plan; thence

(3) At an angle of ninety degrees (90°) with the last named course, easterly along the southerly line of Lots 5 and 6 eighty-five (85) feet to the southeasterly corner of Lot 6; thence

(4) Northerly along the easterly line of Lot 6 one hundred (100) feet to Jefferson Street; thence

(5) Continuing in the same course across Jefferson Street and Lot 9 to a point on the southerly line of Lot 4163 as shown on said plan; said point being easterly of a stone bound on the southerly line of said Lot 4163; thence

(6) Westerly along the southerly line of said Lot 4163 to a stone bound at the northwesterly corner of Lot 7, thence

(7) Southerly along the westerly lines of Lots 7, 3 and 1 to the point of beginning, being Lots 1 to 8 inclusive and part of Lot 9 as shown on said plan and that portion of Jefferson Street included within the bounds above described.

Meaning and intending to describe and to convey as Tract 4 the same premises that were conveyed to Granite State Packing Company, Inc. by deed of Raco Theodore dated March 15, 1946 and recorded in said Registry at Book 1102, Page 316.

Tract 5

A certain lot or parcel of land situated in said Manchester, bounded and described as follows, to wit:

Beginning at a point on the southerly line of Jefferson Street, as now laid out, Three Hundred (300) feet west of the westerly line of Hamilton Street, as now laid out; thence easterly by said line of Jefferson Street Eight-Five (85) feet to the land of one Pieccuch, now or formerly; thence southerly by a line at right angles to said line of Jefferson Street and by the said Pieccuch land, now or formerly, the distance of One Hundred (100) feet to the land of Florence L. Todd, now or formerly; thence westerly by a line parallel with the southerly line of Jefferson Street by the land of the aforesaid Florence L. Todd, now or formerly, and land of William Hill et als, now or formerly, Eight-five (85) feet to the northwest corner of the home lot of said William Hill et als, now or formerly; thence northerly by a straight line the distance of One Hundred (100) feet to the point of beginning.

Meaning and intending to describe and to convey as Tract 5 the same premises that were conveyed to Granite State Packing Company, Inc. by deed of Alice Norris, et als, dated April 23, 1948 and recorded in said Registry at Book 1196, Page 133.

Tract 6

A certain piece or parcel of land situated in Manchester, in the County of Hillsborough and State of New Hampshire, bounded and described as follows: beginning at a stone bound set in the ground at the intersection of the Southwesterly corner of land of Amoskeag Industries, Inc. and the Northerly line of land of Granite State Packing Company; thence running North $89^{\circ} 20' 54''$ West by said last named land one hundred sixteen and twelve hundredths (116.12) feet to remaining land of Boston and Maine Railroad; thence turning and running North $26^{\circ} 16'$ East by said land of said Railroad one hundred four and forty-one hundredths (104.41) feet; thence turning and running Northeasterly on a curve to the right having a radius of three hundred eighty-six and thirty-five hundredths (386.35) feet by said land of said Railroad, one hundred and fifty-eight hundredths (100.58) feet; thence turning and running South $89^{\circ} 20' 54''$ East still by said land of said Railroad one hundred six and twenty-seven hundredths (106.27) feet to said land of Amoskeag Industries, Inc.; thence turning and running Southwesterly on a curve to the left having a radius of two thousand, seven hundred twelve and eighty-one hundredths (2,712.81) feet by said last named land two hundred (200) feet to the point of beginning, be all of said measurements more or less, and being shown on a plan marked "Land in Manchester, N.H. Boston and Maine Railroad - To - Granite State Packing Company J.P. Cronin. Engr. Of Design March 1946".

Meaning and intending to describe and to convey as Tract 6 the same premises that were conveyed to Granite State Packing Company by deed of Boston and Maine Railroad dated July 2, 1946 and recorded in said Registry at Book 1249, Page 115.

Tract 7

Northerly by Hancock Street, formerly called Washington Street, there measuring seventy-five (75) feet; easterly by Hamilton Street, there measuring one hundred (100) feet; southerly by Lot #45, there measuring seventy-five (75) feet; westerly by a line parallel with said Hamilton Street, and seventy-five (75) feet distant therefrom, there measuring one hundred (100) feet.

Being shown as Lot #37 on a plan of lands and house lots at Fulton Place, so-called, in said Manchester, made by Franklin Crombie, October, 1854, and are known as 62 Hamilton Street, Manchester, N.H.

Tract 8

Beginning at a point on the southerly line of Hancock Street one hundred twenty-five (125) feet westerly from the southwest corner of Hancock and Hamilton Streets; thence southerly one hundred (100) feet; thence westerly twenty (20) feet; thence southerly one hundred (100) feet to a point on the northerly line of Vernon Street one hundred forty-five (145) feet west of the westerly line of Hamilton Street; thence southerly and westerly to a point on the southerly line of Vernon Street two hundred (200) feet west of the westerly line of Hamilton Street; thence westerly by the southerly line of Vernon Street about three hundred forty-one and seventeen one-hundredths (341.17) feet; thence northerly about two hundred thirty-seven and sixty-three one-hundredths (237.63) feet to the southerly line of Hancock Street; thence easterly four hundred sixteen and five-tenths (415.5) feet by the southerly line of Hancock Street to the place of beginning; subject to whatever rights the City of Manchester has to lay out and develop Vernon Street;

Tract 9

Beginning at a point on the southerly line of Hancock Street about seventy-five (75) feet west of Hamilton Street at land of Joseph Rovner, now or formerly; thence southerly by land of said Joseph Rovner about one hundred (100) feet to land now or formerly of one Guidi; thence westerly by a line parallel with Hancock Street fifty (50) feet to a point; thence northerly by a line parallel with the first described line about one hundred (100) feet to a point on the southerly line of Hancock Street; thence easterly by the southerly line of Hancock Street fifty (50) feet to the place of beginning.

Meaning and intending to describe and to convey as Tract 7-9 the same premises that were conveyed to Granite State Packing Company by deed of Professional Building, Inc. dated September 21, 1962 and recorded in said Registry at Book 1702, Page 362.

Tract 10

Beginning at a point in the southerly line of Hancock Street (formerly known as Washington Street) at its intersection with the easterly line of land of Boston and Maine Railroad; thence easterly by the southerly line of said Hancock Street, crossing what is known as Webster Street, South Manchester, two hundred and ninety-seven (297) feet more or less to land of owners unknown; thence southerly by land of owners unknown four hundred and sixty-five (465) feet more or less to land formerly known as the Kennedy land; thence westerly by said Kennedy land to the intersection of its northerly line with the easterly line of land of said Boston and Maine Railroad; thence northerly by said railroad land, crossing Clay Street and Adams Street, so-called, six hundred (600) feet more or less to the point of beginning, reserving the public rights in all highways and such portions of said land as the City of Manchester has taken for the New Queen City Bridge.

Meaning and intending to describe and to convey as Tract 10 the same premises described as Tract V in the deed from Corenco Corporation to Granite State Packing Company dated June 2, 1969 and recorded in said Registry at Book 2031, Page 140.

Tract 11

A certain lot of land with the buildings thereon, situated in said Manchester, and known as 97 Hancock Street.

Beginning at a stake set on the northerly line of Hancock Street, a distance of 250 feet from the northwesterly corner of the intersection of Hamilton Street and Hancock Street, thence westerly along the northerly line of Hancock Street, a distance of 50 feet to a stake; thence northerly at right angles, a distance of 100 feet to a stake; thence easterly at right angles, a distance of 50 feet to a stake; thence southerly at right angles, a distance of 100 feet to the point of beginning. The premises located on this tract of land are known as 97 Hancock Street.

Meaning and intending to describe and to convey as Tract 11 the same premises that were conveyed to Granite State Packing Co., Inc. by deed of Armand Lavoie, Executor of the Estate of Alphonse Lavoie, dated November 17, 1988 and recorded in said Registry at Book 5063, Page 305.

Tract 12

A certain tract of land in said Manchester more particularly bounded and described as follows:

Beginning at a stake on the northerly line of Queen City Avenue, formerly Biron Street, at the southwest corner of land known as Lot No. 7 now or formerly of Ruth B. Johnson; thence northerly by the land of the said Ruth B. Johnson, ninety (90) feet to a

stake; thence westerly by land now or formerly of the Estate of Waterman Smith, two hundred (200) feet to the northeasterly corner of Lot No. 12; thence southerly by Lot No. 12, ninety (90) feet to the northerly line of Queen City Avenue; thence easterly along the northerly line of Queen City Avenue two hundred (200) feet to the point of beginning.

Said premises are known as Lots numbered 8, 9, 10 and 11, as shown on a plan of the Kennedy Land, made by Joseph B. Sawyer, C.E., dated July 1, 1893, and filed in the Hillsborough County Registry of Deeds as Plan #47.

Tract 13

A certain tract of land situated in said Manchester known as Lot #12 as shown on a plan of lots of land in said Manchester, formerly owned by Kennedy Land Co., drawn by J.B. Sawyer, July 1, 1893, and filed in the office of the Registrar of Deeds in said County July 8, 1893, and numbered 47 bounded and described as follows:

Beginning on the northerly side of Queen City Avenue, formerly Byron Street, about 592.12 feet westerly from the westerly line of Brown Avenue; thence westerly by Queen City Avenue 50 feet; thence northerly by Lot #13, 90 feet; thence easterly by land now or formerly of Waterman Smith 50 feet; thence southerly by Lot #11, 90 feet to the point of beginning.

Tract 14

A certain tract of land situated in said Manchester known as Lot #13 as shown on a plan of lots of land in said Manchester, formerly owned by Kennedy Land Co., drawn by J.B. Sawyer, July 1, 1893, and filed in the office of the Registrar of Deeds in said County July 8, 1893, and numbered 47 bounded and described as follows:

Southerly by Queen City Avenue, formerly Byron Street, there measuring 50 feet; westerly by Lot #14, as shown on said plan, there measuring 90 feet; northerly by land now or formerly of Norbert S. Burns and the heirs of Waterman Smith, there measuring 50 feet; easterly by Lot #12 as shown on said plan, there measuring 90 feet.

Tract 15

A certain tract of land in said Manchester more particularly bound and described as follows:

Beginning at a point 66.5 feet westerly from an iron pipe at the corner of land now or formerly of Luigi Guidi and being on the southerly line of Vernon Street; thence southerly at right angles with the last described course 14.0 feet; thence westerly at right angles with the last described course 27.5 feet; thence southerly at right angles with the last described course 155.0 feet at an angle to a stake; thence westerly 142.60 feet to an iron pipe on the northerly line of Lot No. 11 on Queen City Avenue; thence deflecting to

the right 103 degrees 26' and bearing northeasterly 40.88 feet, more or less, to an iron pipe; thence deflecting 90 degrees westerly and bearing westerly 100.0 feet to land now or formerly of Manchester Rendering Company to an iron pipe; thence northeasterly by land of said Company 162.37 feet to the southerly line of Vernon Street extended; thence easterly along the southerly line of Vernon Street extended 274.67 feet to the point of beginning.

Tract 16

A certain tract of land situated in said Manchester and more particularly bounded and described as follows:

Beginning at the southwesterly corner of the premises herein conveyed on the northerly line of land formerly of Kennedy at land of the Manchester Rendering Co.; thence northerly along the line of said Manchester Rendering Co., sixty-five (65) feet more or less to a point four hundred (400) feet south of the southerly line of Hancock Street; thence easterly parallel with the southerly line of said Hancock Street one hundred (100) feet to a point; thence in a southerly direction by a line parallel with the easterly line of the aforementioned Manchester Rendering Co. land forty-two (42) feet to a point on the aforementioned land now or formerly of Kennedy; thence in a westerly direction along the northerly line of said Kennedy land one hundred five (105) feet to the point of beginning.

Meaning and intending to describe and to convey as Tracts 12-16 the same premises that were conveyed to Granite State Packing Co., Inc. by deed of Queen City Plaza Real Estate Associates, Inc. dated August 14, 1989 and recorded in said Registry at Book 5127, Page 922.

Tract 17

A certain piece or parcel of property, with the buildings and improvements thereon, situate in the City of Manchester, County of Hillsborough, State of New Hampshire, and shown as Parcel 2 on a plan entitled "ALTA/ACSM Land Title Survey (Urban), Jac Pac Foods, Ltd.," dated March, 1998, prepared by Costello, Lomasney & deNapoli, Inc., to be recorded herewith, being more particularly bounded and described as follows:

Beginning at a point on the northerly street line of Queen City Avenue at its intersection with the division line between the parcel herein described on the west and land now or formerly of Boston and Maine Corporation on the east, said point being 150.20 feet northerly along said Boston and Maine Corporation land from the northerly street line of Byron Street, and said point being the southeasterly corner of the parcel herein described;

Thence, northwesterly along said Queen City Avenue street line on a bearing of North 50° 04' 51" West, a distance of 326 feet, more or less, to the Merrimack River;

Thence, northerly along said river a distance of 862 feet, more or less, to a point on the division line between the parcel herein described on the southeast and land now or formerly of the City of Manchester, Parks & Recreation Department (Tax Map 909, Lot 4) on the northeast;

Thence, southeasterly along said land of the City of Manchester on a bearing of South 55° 20' 46" East, a distance of 98 feet, more or less, to a point on the division line between the parcel herein described on the northwest and land now or formerly of Boston and Maine Corporation on the southeast;

Thence, southwesterly, southerly, southeasterly and southwesterly, in that order, along said land of Boston and Maine Corporation on the following courses: along a curve to the left with a radius of 2,993.81 feet, a distance of 200.26 feet; South 04° 25' 58" West, a distance of 174.10 feet; South 55° 20' 46" East, a distance of 12.30 feet; South 34° 39' 14" West, a distance of 526.09 feet to the point or place of beginning.

Meaning and intending to describe and to convey as Tract 17: (i) the premises described as Tract I, Tract III and a portion of Tract II in the deed from Corenco Corporation to Granite State Packing Company dated June 2, 1969 and recorded in said Registry at Book 2031, Page 140; and (ii) the same premises conveyed to Granite State Packing Company by deed of Amoskeag Industries, Inc. dated February 1, 1943 and recorded at Book 1249, Page 124.

Tract 18

A certain piece or parcel of property, with the buildings and improvements thereon, situate in the City of Manchester, County of Hillsborough, State of New Hampshire, and shown as Parcel 3 on a plan entitled "ALTA/ACSM Land Title Survey (Urban), Jac Pac Foods, Ltd.," dated March, 1998, prepared by Costello, Lomasney & deNapoli, Inc., to be recorded herewith, being more particularly bounded and described as follows:

Beginning at a point on the northerly street line of Byron Street at its intersection with the division line between the parcel herein described on the west and land now or formerly of Boston and Maine Corporation on the east, said point being North 55° 20' 46" West, a distance of 1.76 feet from an iron pin and being the southwest corner of the parcel herein described;

Thence, westerly along said street line on a bearing of North 55° 20' 46" West, a distance of 100.00 feet to a point;

Thence, further westerly on a projection of said street line and continuing on a bearing of North 55° 20' 46" West, a distance of 239 feet, more or less, to the Merrimack River;

Thence, northerly along said river a distance of 121 feet, more or less, to a point on the southerly street line of Queen City Avenue;

Thence, southeasterly along said street line on a bearing of South 50° 04' 51" East, a distance of 329 feet, more or less, to a point on the division line between the parcel herein described on the west and said land of Boston and Maine Corporation on the east;

Thence, southwesterly along said Boston and Maine Corporation land on a bearing of South 34° 39' 14" West, a distance of 89.95 feet to the point or place of beginning.

Meaning and intending to describe and to convey as Tract 18 the premises described as Tract IV and a portion of Tract II in the deed from Corenco Corporation to Granite State Packing Company dated June 2, 1969 and recorded in said Registry at Book 2031, Page 140.

IN ADDITION TO ANY DEED RESTRICTIONS CONTAINED IN THE AGREEMENT TRACTS 1-18 WILL BE CONVEYED SUBJECT TO THE FOLLOWING ENCUMBRANCES AND ANY OTHER ENCUMBRANCE OF RECORD:

1. Restriction on use contained in the deed from Saul Waisman and Samuel Waisman to Granite State Packing Company dated September 24, 1942 and recorded at Book 1038, Page 395.
2. Such rights, if any, as the public may have in that portion of Jefferson Street contained in the description in the deed from Raco Theodore to Granite State Packing Company, Inc. dated March 15, 1946 and recorded at Book 1102, Page 316.
3. Restrictions and covenants contained in the deed from Boston and Maine Railroad to Granite State Packing Company dated July 2, 1946 and recorded at Book 1249, Page 115.
4. Reservation of riparian and flowage rights contained in the deed from Amoskeag Industries, Inc. to Granite State Packing Company dated February 1, 1943 and recorded at Book 1249, Page 124.
5. Rights of others in or to the uninterrupted flow of the Merrimack River, but this policy does not insure any riparian rights or easements in favor of the owner of the premises.

6. Title to so much of the premises as lies within the bed or bottom of the Merrimack River, its arms, branches or tributaries, by whatever name called, is not insured.
7. Whatever rights the City of Manchester has to lay out and develop Vernon Street, as set forth in the deed from Professional Building, Inc. to Granite State Packing Company dated September 21, 1962 and recorded at Book 1702, Page 362.
8. Rights of others in and to the passageway comprising a portion of Tract 17, as more fully described in the deed from Corenco Corporation to Granite State Packing Company dated June 2, 1969 and recorded at Book 2031, Page 140.
9. Rights of the public in all highways described in Tract V of the deed from Corenco Corporation to Granite State Packing Company dated June 2, 1969 and recorded at Book 2031, Page 140.
10. Easement to the City of Manchester for the benefit of Manchester Water Works dated October 24, 1946 and recorded at Book 1135, Page 9.
11. Easement to the City of Manchester Water Works dated October 15, 1975 and recorded at Book 2431, Page 582.
12. Easement to the City of Manchester dated October 15, 1975 and recorded at Book 2431, Page 584.
13. Easement to the City of Manchester dated November 26, 1975 and recorded at Book 2443, Page 49, amended on September 15, 1997 at Book 5889, Page 1940.
14. Easement and right of way granted to Robert W. Meserve and Benjamin H. Lacy, as Trustees of the property of Boston and Main Corporation, dated June 23, 1976 and recorded at Book 2464, Page 107.
15. Easement to Manchester Gas Company dated October 5, 1975 and recorded at Book 2464, Page 364.
16. Easement from Helen F. Mulcahy to Theresa Glines dated September 16, 1977 and recorded at Book 2558, Page 647.
17. Terms and conditions of License and Agreement dated June 23, 1988 between Agway Petroleum Corporation and Queen City Plaza Real Estate Associates, Inc. dated June 23, 1988 and recorded at Book 4828, Page 204.

GRANTOR WILL ALSO GRANT AND CONVEY TO GRANTEE THE FOLLOWING EASEMENTS AND APPURTENANT RIGHTS WITH QUITCLAIM COVENANTS (COLLECTIVELY THE "EASEMENT PARCELS"):

1. Easement and Right of Way from Foster Grant Co., Inc. to Granite State Packing Company, dated June 22, 1976, recorded in the Hillsborough County Registry of Deeds at Book 2464, Page 103.
2. Easement and Right of Way from Robert W. Meserve and Benjamin H. Lacy, as Trustees of the property of Boston and Maine Corporation to Granite State Packing Company, dated June 23, 1976, recorded in the Hillsborough County Registry of Deeds at Book 2464, Page 111.
3. Airspace Agreement from the City of Manchester to Jac Pac Foods, Ltd., dated December 11, 1997, recorded in the Hillsborough County Registry of Deeds at Book 5889, Page 1933.
4. Deed of Easement from the Boston and Maine Corporation to Jac Pac Foods, Ltd., dated November 18, 1997, recorded in the Hillsborough County Registry of Deeds at Book 5894, Page 1063.
5. Terms and conditions of Memorandum of Understanding dated December 3, 1975 among Robert W. Meserve and Benjamin H. Lacy, as Trustees of the property of the Boston & Maine Corporation, Debtor; the City of Manchester; Foster Grant Co., Inc.; American Velcro Company; and Granite State Packing Company regarding railroad crossings and related matters in the vicinity of Hancock, Byron and Dunbar Streets in Manchester, New Hampshire.

EASEMENT PARCELS 1-5 WILL BE CONVEYED SUBJECT TO THE FOLLOWING ENCUMBRANCES AND ANY OTHER MATTER OF RECORD:

1. Exceptions and reservations contained in the deed from W.H. McElwain Company to International Shoe Company dated June 20, 1923 and recorded at Book 870, Page 416.
2. Rights of others in Sundial Avenue, the Boston and Maine Railroad crossing, and other streets and ways; and specific reservations made by International Shoe Company for ingress and egress; use, maintenance and improvement of utilities, pumping and intake facilities, and fire protection lines set forth in the deed from International Shoe Company to Lamex Chemical Corporation dated July 6, 1956 and recorded at Book 1472, Page 57 and in the deed from Lamex Chemical Corporation to Foster-Grant Company, Inc. dated August 1, 1957 and recorded at Book 1513, Page 474.

3. Agreement to Switch to and from Sidetrack dated December 22, 1944 between Boston and Maine Railroad and International Shoe Company, Inc. recorded at Book 1472, Page 83.
4. Pipe Agreement dated April 5, 1933 by and between the Boston and Maine Railroad and International Shoe Company recorded at Book 1472, Page 77.
5. Right and easement from Foster Grant Co., Inc. to Public Service Company of New Hampshire dated January 24, 1973 and recorded at Book 2278, Page 280.
6. Easement of Foster Grant Co., Inc. to the City of Manchester dated November 26, 1975 and recorded at Book 2462, Page 77.
7. Rights of the public and others in and to Sundial Avenue and Byron Street.
8. Obligations to Boston and Maine Railroad described at Book 1472, Page 80 and at Book 1472, Page 83.
9. Terms and conditions of Memorandum of Understanding dated December 3, 1975 among Robert W. Meserve and Benjamin H. Lacy, as Trustees of the property of the Boston & Maine Corporation, Debtor; the City of Manchester; Foster Grant Co., Inc.; American Velcro Company; and Granite State Packing Company regarding railroad crossings and related matters in the vicinity of Hancock, Byron and Dunbar Streets in Manchester, New Hampshire.
10. Terms and conditions of Easement and Right of Way from Foster Grant Co., Inc. to Granite State Packing Company, dated June 22, 1976, recorded in the Hillsborough County Registry of Deeds at Book 2464, Page 103.
11. Terms and conditions of Easement and Right of Way from Robert W. Meserve and Benjamin H. Lacy, as Trustees of the property of Boston and Maine Corporation to Granite State Packing Company, dated June 23, 1976, recorded in the Hillsborough County Registry of Deeds at Book 2464, Page 111.
12. Terms and conditions of Airspace Agreement from the City of Manchester to Jac Pac Foods, Ltd., dated December 11, 1997, recorded in the Hillsborough County Registry of Deeds at Book 5889, Page 1933.
13. Terms and conditions of Deed of Easement from the Boston and Maine Corporation to Jac Pac Foods, Ltd., dated November 18, 1997, recorded in the Hillsborough County Registry of Deeds at Book 5894, Page 1063.

Conveying also all land owned by the Seller in the City of Manchester and bounded generally by the Merrimack River, Queen City Avenue, Vernon Street, Hamilton Street, Jefferson Street, Baker Court, Elm Street, and Gas Street and bisected by the B&M Railroad right of way.

City of Manchester New Hampshire

In the year Two Thousand and Four

A RESOLUTION

"A Resolution authorizing up to Three Million Four Hundred Thousand Dollars (\$3,400,000.) in expenditures from the Special Revenue Reserve Account for costs relating to the acquisition of the so-called JacPac property and further authorizing the mayor to execute related documents to consummate such transaction."

Resolved by the Board of Mayor and Aldermen of the City of Manchester as follows:

WHEREAS, the City wishes to purchase property known as "JacPac" situated along the bank of the Merrimack River and further defined as follows:

Tax Map Number	Lot Number
0433	01
0433	07
0434	05
0434	06
0434	07
0434	11
0435	13
0435	14
0435	14A
0439	01
0439	02
0439	03

and

WHEREAS, the Manchester Housing and Redevelopment Authority and the Manchester Development Corporation have agreed to assist in the acquisition of said parcel;

NOW THEREFORE BE IT RESOLVED, that the Finance Officer is hereby authorized to expend up to Three Million Four Hundred Thousand Dollars (\$3,400,000.) from the Special Revenue Reserve Account for the purchase and related costs of acquisition of the aforementioned property.

BE IT FURTHER RESOLVED that the mayor is authorized to execute a Purchase and Sales Agreement, allowing Manchester Housing and Redevelopment Authority to hold title on behalf of the city, and any other documents as may be required inclusive of an Amendment to the Cooperation agreement between the City and Manchester Housing and Redevelopment Authority dated November 6, 2002 for the so-called JacPac property project.

BE IT FURTHER RESOLVED, that the Manchester Development Corporation is authorized to expend up to seventy-five thousand dollars (\$75,000.00) for a master plan of the "JacPac" property and surrounding area.

5 + 10



ROPES & GRAY LLP

ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050
BOSTON NEW YORK SAN FRANCISCO WASHINGTON, DC

August 20, 2004

Richard A. Manley, Jr.
(617) 951-7481
rmanley@ropesgray.com

Kevin A. Clougherty, Finance Officer
Department of Finance
City of Manchester
One City Hall Plaza
Manchester, New Hampshire 03101

Re: Use of Special Revenue Reserve Account

Dear Kevin:

You have asked us for our opinion as to whether the Board of Mayor and Aldermen may properly appropriate funds held in the City's Special Revenue Reserve Account for use in the purchase of the Tyson meat packing facility.

The City's ordinance governing the use of funds in the Special Revenue Reserve Account provides, in relevant part, that:

The Board of Mayor and Aldermen may [emphasis added] appropriate the balance or a portion of the balance [in the Special Revenue Reserve Account] during the development of the annual budget. . .[and that] the Board of Mayor and Aldermen may appropriate principal, or any investment earnings thereon, for capital purposes.

In our view, the words of the ordinance governing the use of funds in the Special Revenue Reserve Account, permit, but do not require, the Board of Mayor and Aldermen to appropriate funds in the Special Revenue Reserve Account during the annual budget process. Indeed, an important public purpose for maintaining a special reserve account is to permit the City to move quickly to address special capital expenditure needs, which may not necessarily present themselves in a manner permitting their inclusion in the normal budgeting process.

As funds in the Special Revenue Reserve Account are to be used to handle only capital expenditures, the amendment of the City's CIP to recognize the need to use these funds outside of the normal budget process, might be one way to facilitate public input in the City's decision to purchase the Tyson facility or any other capital expenditure funded with Special Revenue Reserve Account funds.

I would be pleased to discuss this matter with you in further detail if that would be helpful.

Sincerely,

Richard A. Manley, Jr.

RMX:jfd

9520012_1.DOC

City of Manchester New Hampshire

In the year Two Thousand and Four

A RESOLUTION

"Amending the FY 2005 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Three Million Four Hundred Thousand Dollars (\$3,400,000) for CIP 613105 "Jac Pac" Acquisition Project."

Resolved by the Board of Mayor and Aldermen of the City of Manchester as follows:

WHEREAS, the Board of Mayor and Aldermen has approved the 2005 CIP as contained in the 2005 CIP budget; and

WHEREAS, Table 3 contains all sources of Cash funds to be used in the execution of projects; and

WHEREAS, for the purpose of economic development the Board of Mayor and Aldermen desires to provide funding in the amount of \$3,400,000 for the acquisition of the so called "Jac Pac" project and related development costs; and

WHEREAS, funds in at least that amount are available from the City's "Special Revenue Reserve Account";

NOW, THEREFORE, be it resolved that the 2005 CIP be amended as follows:

1. By decreasing:

"Special Revenue Reserve Account - \$3,400,000

By adding:

FY2005 613105 - "Jac Pac" Acquisition Project - \$3,400,000 Special Revenue Reserve Account

Resolved, that this Resolution shall take effect upon its passage.

5 + 10

City of Manchester New Hampshire

In the year Two Thousand and Four

A RESOLUTION

“Amending the FY 2003 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000) for CIP 511803 Stadium Construction & Gill Stadium Reconstruction Project.”

Resolved by the Board of Mayor and Aldermen of the City of Manchester as follows:

WHEREAS, the Board of Mayor and Aldermen has approved the 2003 CIP as contained in the 2003 CIP budget; and

WHEREAS, Table 3 contains all sources of Cash funds to be used in the execution of projects; and

WHEREAS, the Board of Mayor and Aldermen wishes to provide funding to effect required improvements for the purpose of universal accessibility to the Gill Stadium pressbox and other need stadium improvements estimated to cost \$850,000; and

WHEREAS, funds in at least that amount are available from the City’s “Special Revenue Reserve Account”;

NOW, THEREFORE, be it resolved that the 2003 CIP be amended as follows:

1. By decreasing:

“Special Revenue Reserve Account - \$850,000

By increasing:

FY2003 511803 – Stadium Construction & Gill Stadium Reconstruction - \$850,000
Special Revenue Reserve Account
(from \$27,500,000 to \$28,350,000)

Resolved, that this Resolution shall take effect upon its passage.

City of Manchester New Hampshire

In the year Two Thousand and Four

A RESOLUTION

"A Resolution authorizing up to Three Million Four Hundred Thousand Dollars (\$3,400,000.) in expenditures from the Special Revenue Reserve Account for costs relating to the acquisition of the so-called JacPac property and further authorizing the mayor to execute related documents to consummate such transaction."

Resolved by the Board of Mayor and Aldermen of the City of Manchester as follows:

WHEREAS, the City wishes to purchase property known as "JacPac" situated along the bank of the Merrimack River and further defined as follows:

Tax Map Number	Lot Number
0433	01
0433	07
0434	05
0434	06
0434	07
0434	11
0435	13
0435	14
0435	14A
0439	01
0439	02
0439	03

and

WHEREAS, the Manchester Housing and Redevelopment Authority and the Manchester Development Corporation have agreed to assist in the acquisition of said parcel;

NOW THEREFORE BE IT RESOLVED, that the Finance Officer is hereby authorized to expend up to Three Million Four Hundred Thousand Dollars (\$3,400,000.) from the Special Revenue Reserve Account for the purchase and related costs of acquisition of the aforementioned property.

BE IT FURTHER RESOLVED that the mayor is authorized to execute a Purchase and Sales Agreement, allowing Manchester Housing and Redevelopment Authority to hold title on behalf of the city, and any other documents as may be required inclusive of an Amendment to the Cooperation agreement between the City and Manchester Housing and Redevelopment Authority dated November 6, 2002 for the so-called JacPac property project.

BE IT FURTHER RESOLVED, that the Manchester Development Corporation is authorized to expend up to seventy-five thousand dollars (\$75,000.00) for a master plan of the "JacPac" property and surrounding area.

5 + 10

City of Manchester New Hampshire

In the year Two Thousand and Four

A RESOLUTION

"Amending the FY 2005 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Three Million Four Hundred Thousand Dollars (\$3,400,000) for CIP 613105 "Jac Pac" Acquisition Project."

Resolved by the Board of Mayor and Aldermen of the City of Manchester as follows:

WHEREAS, the Board of Mayor and Aldermen has approved the 2005 CIP as contained in the 2005 CIP budget; and

WHEREAS, Table 3 contains all sources of Cash funds to be used in the execution of projects; and

WHEREAS, for the purpose of economic development the Board of Mayor and Aldermen desires to provide funding in the amount of \$3,400,000 for the acquisition of the so called "Jac Pac" project and related development costs; and

WHEREAS, funds in at least that amount are available from the City's "Special Revenue Reserve Account";

NOW, THEREFORE, be it resolved that the 2005 CIP be amended as follows:

1. By decreasing:

"Special Revenue Reserve Account - \$3,400,000

By adding:

FY2005 613105 - "Jac Pac" Acquisition Project - \$3,400,000 Special Revenue Reserve Account

Resolved, that this Resolution shall take effect upon its passage.

5 + 10

City of Manchester New Hampshire

In the year Two Thousand and Four

A RESOLUTION

"Amending the FY 2003 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000) for CIP 511803 Stadium Construction & Gill Stadium Reconstruction Project."

Resolved by the Board of Mayor and Aldermen of the City of Manchester as follows:

WHEREAS, the Board of Mayor and Aldermen has approved the 2003 CIP as contained in the 2003 CIP budget; and

WHEREAS, Table 3 contains all sources of Cash funds to be used in the execution of projects; and

WHEREAS, the Board of Mayor and Aldermen wishes to provide funding to effect required improvements for the purpose of universal accessibility to the Gill Stadium pressbox and other need stadium improvements estimated to cost \$850,000; and

WHEREAS, funds in at least that amount are available from the City's "Special Revenue Reserve Account";

NOW, THEREFORE, be it resolved that the 2003 CIP be amended as follows:

1. By decreasing:

"Special Revenue Reserve Account - \$850,000

By increasing:

FY2003 511803 - Stadium Construction & Gill Stadium Reconstruction - \$850,000
Special Revenue Reserve Account
(from \$27,500,000 to \$28,350,000)

Resolved, that this Resolution shall take effect upon its passage.

5 + 10